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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 9666 of 1999

Between:

R.Damodar, S/o late Sri R.A.Swamy, Aged 37 years,

Occupation: Junior Assistant/Typist (Temporary), Andhra Pradesh State Social Welfare Advisory Board, Hyderabad,

R/o H.No.9-103, Santinagar, P&T Colony, Dilsukhnagar, Hyderabad.

..... PETITIONER

AND

1. The Chair -Person, Andhra Pradesh State Social Welfare Advisory Board, Mazainine Floor, Gagan Vihar, Opp:Gandhi Bhavan, M.J. Road, Hyderabad.

2. The Chair –Person, Central Social Welfare Board, Samaj Kalyan Bhavan, B-12, Institutional Area, South of I.I.T., New Delhi.

3. B.SureshKumar, Occ: Junior Assistant/Typist, Andhra Pradesh State Social Welfare Advisory Board, Mazainine Floor, Gagan Vihar, Opp: Gandhi Bhavan, M.J. Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for records pertaining to the impugned appointment order of the respondent No.3 herein contained inNo.F.SB/AP/Admn.-13/99-2000/32, dated 09-04-1999, issued by the respondent No.1 herein and declare it as illegal, arbitrary, discriminatory, without jurisdiction, unconstitutional, void-ab-initio, opposed to all canons of justice and fair play and violative of Articles 14, 16 and 21 of the Constitution of India and consequently hold that the petitioner herein is entitled to be appointed as Junior Assistant/Typist in the Respondent Board with effect from the date on which the Respondent No.3 herein is appointed with all consequential benefits and attendant benefits including arrears of salary, seniority and promotion etc., by the issuance of writ, order or direction essentially in the nature of writ of Mandamus.

Counsel for the Petitioner:MR.CHINDAMANJANEYULU

Counsel for the Respondents 1 & 2: MR.M.JAGANNATHA SARMA, Standing Counsel.

Counsel for respondent No.3: Sri P.Krishna Reddy.

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO.9666 OF 1999

ORDER:

Heard Sri Chindamanjaneyulu, the learned counsel appearing on behalf of the petitioner and Sri M.Jagannatha Sarma, the learned Standing Counsel appearing on behalf of the respondents 1 and 2 and Sri P.Krishna Reddy and Smt. P. Sarada, the learned counsel appearing on behalf of the third respondent.

The petitioner, who has been working as a Junior Assistant/Typist with the respondents 1 and 2, files this writ petition, *inter alia,* challenging the correctness of the orders dated
09-04-1999 appointing the third respondent as regular Junior Assistant/Typist and further for a declaration that the petitioner is entitled for the said post.

The case of the petitioner, in brief, is that he is a commerce graduate and passed typewriting Higher Grade in English and Telugu and Diploma in Data Entry in Computers qualifications. On sponsoring by the Employment Exchange on 08.12.1993, the respondents 1 and 2 selected the petitioner having regard to the qualifications for the said post of Junior Assistant/Typist on consolidated pay of Rs.1,000/- per month as per the proceedings dated 15.02.1994 and accordingly he

joined the service on 21.02.1994 after producing physical fitness certificate since then he has been regularly working there without any complaint. Though in the meanwhile his service was sought to be terminated, the same was successfully interfered with by this Court in the earlier writ petition filed in W.P.No.19018 of 1998. Even though the petitioner has filed representations on 02.11.1995, 06.06.1996, 23.10.1996 and 22.06.1998 requesting for regularization of his services on payment of regular scale of pay, the same was not accepted and the same is kept pending. However, surprisingly certain candidates namely Sri V.Anandu, Sri A.B.K.Murthy, Smt K.Suvarnamma and Sri Ch.Narasing were regularly absorbed in the year 1992, 1982, 1989 to 1990 and 1995 respectively and the petitioner's case remained un-considered which itself is arbitrary action. Further, it was pointed out that the very appointment of the third respondent who is a far junior to the petitioner is illegal. It is stated that the third respondent was appointed temporarily on 17.09.1996 and even though he is also not qualified as required under Rule 5 of the Recruitment Rules and Service Conditions which were duly approved by the Government through the G.O.Ms.No.10, dated 12.03.1996 prescribing the qualifications of Intermediate with Diploma in Commerce or certificate in English Higher Grade Typewriting and Telugu Lower Grade Typewriting whereas the third respondent having only passed lower Grade Typewriting, therefore, he is not qualified. It was further pointed out that such an appointment is also not valid since there is no regularly constituted Board and thus the same is vitiated. Hence, the writ petition.

In the counter affidavit filed by the first respondent, it is pointed out by the learned counsel for the petitioner that the petitioner was appointed on consolidated pay in the Family Counselling Centre located in the Women's Protection Cell, C.B. C.I.D. Police at Lakdikapool, Hyderabad which was started in the year 1983 on an experimental basis under specific scheme and the scheme itself is a temporary one liable to be discontinued at any time either by the Central Social Welfare Board, New Delhi or by the State Board. That apart, answering the main grounds raised in the writ petition, it was pointed out that in regard to the similarly placed employees as stated that the said employees were directly appointed by the State Board, the petitioner cannot claim any benefit on par with them. Further, it is also pointed out that there is no channel for absorbing the staff of Family Counselling Centre Scheme into the State Board Service as regards the objection raised against the third

respondent. It is stated that the third respondent was appointed by the Board itself on 09.04.1999 and he passed B.Com., and Typewriting Lower Grade in English and he is qualified for the said post. Therefore, his case was taken up for consideration

During the process of selection along with the others and he was rightly appointed. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

Similar is the defence raised by the third respondent in the counter affidavit filed separately.

Having heard the counsel on either side and on perusal of the material, the question, which falls for consideration is as to whether the petitioner is entitled for regularization of service on par with the other employees as pointed out by him and also the third respondent.

The main ground urged on behalf of the petitioner is that even though he has been appointed through the Employment Exchange and put up service for a long time and inspite of his representations, his case is not being considered properly. Further, similarly placed persons have been regularly appointed apart from the third respondent who is dis-qualified. There is not dispute to the factum of appointment of the petitioner through the Employment Exchange and also the said appointment being a temporary one. There is also no serious dispute to the fact that the petitioner was appointed in a Scheme as initiated from the Central Government. Further, there is also no dispute raised by the petitioner in regard to the appointments of the persons mentioned in Para 4 of the affidavit on par with whom he pleaded a discrimination that they were appointed by the Board and not under the same Scheme under which the petitioner was appointed. It is also not disputed to the fact that the third respondent also does not come under any service by way of appointment under the said Scheme, therefore, the petitioner prima facie totally falls on a different stand vis-à-vis, the persons mentioned in Para No.4 and also the third respondent. Having regard to the fact that the Scheme itself has its own objective and worked as is being only temporary. The petitioner cannot therefore make any claim muchless as any enforceable right on the same lines as that of the persons complained against him. In view of the fact that the very source and the nature of appointment being totally different, the petitioner cannot plead any discrimination muchless arbitrariness on the part of the respondents while making their appointments. In view of the same, I do not find any merits in the claim raised by the

petitioner especially on the ground of arbitrariness under Article 226 of the Constitution of India. As rightly held by the Supreme Court in ***State of H.P. v. Nodha Ram*** in regard to the appointment under a particular Scheme project or scheme, there cannot be any vested right created in such temporary employees. Even in regard to the employees on daily wages, any termination effected on coming to end of project, no direction can be given as held by the Apex Court in ***State of H.P. v. Suresh Kumar Verma***. Having regard to the totality and also in view of the very nature of appointment of the petitioner, he has failed to make out or establish any enforceable right under Article 226 of the Constitution of India. Hence, I do not find any merits in the writ petition.

The writ petition is, accordingly, dismissed. No costs.

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B. PRAKASH RAO, J

24th January 2005.

Chvn

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER.

To

1. The Chair -Person, Andhra Pradesh State Social Welfare Advisory Board, Mazainine Floor, Gagan Vihar, Opp:Gandhi Bhavan, M.J. Road, Hyderabad.

2. The Chair –Person, Central Social Welfare Board, Samaj Kalyan Bhavan, B-12, Institutional Area, South of I.I.T., New Delhi.

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